

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF PUERTO RICO**

3           United States of America

4           Plaintiff

5                   v.

Criminal No. 08-330 (GAG)

6           Joel Ramos Santiago

7           Defendant

8  
9                                   **OPINION AND ORDER**

10           Defendant Ramos-Santiago's *Motion for Reconsideration that he be Sentenced to the*  
11 *Minimum Within the Negotiated [Sentencing Guideline] Range and Request that the Court*  
12 *Particularize its Findings in a Separate Order* (Docket No. 1390) is hereby **DENIED**.

13           Pursuant to his plea agreement, defendant stipulated with the Government a total offense  
14 level of 33 under the U.S. Sentencing Guidelines. The advisory sentencing range therein is that of  
15 135-168 months. Under the terms of his plea agreement, defendant reserved the right to request a  
16 minimum of 144 months imprisonment, while the government that to seek the maximum of the  
17 guideline range, to wit, 168 months. More so, to this sentence time served in Criminal Case 07-54  
18 (DRD), an arson case whose facts constitute relevant conduct (an overt act) within the instant  
19 conspiracy, would be deducted.

20           At sentencing, the court imposed upon defendant a sentence of 157 months, that is, in the  
21 middle of the 144-168 month sentencing range stipulated by the parties. The Court then deducted  
22 37 months for the time served in criminal case 07-54 (DRD). The total sentence, thus, was 120  
23 months.

24           Defendant contends that the Court sentenced him disproportionately to two of his  
25 codefendants, who were also sentenced in the arson case, Ismael Heredia-Ortíz, who received a  
26 sentence of 170 months, and Héctor Rivera Febres, who received a sentenced of 110 months, both  
27 after a deduction for their arson sentences. Defendant posits that when his sentence is compared to

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3 that of Heredia- Ortíz and Rivera-Febres, the court sentenced the other defendants “*in an erratic and*  
4 *non-uniform way*”. He further adduces that the court failed to particularize its findings when  
5 sentencing both of his codefendants.

6 Defendant’s proportionality argument is unconvincing to the court. At the outset, defendant  
7 simply does not have any standing to question the logic behind defendant Heredia-Ortíz and Rivera-  
8 Febres’ particular sentences, which were also sentences falling within the parameters of their  
9 respective plea agreement stipulated guideline ranges. In addition, the court, in sentencing both  
10 codefendants, considered not only the plea agreement and applicable sentencing guidelines, but all  
11 the Section 3553(a) sentencing factors as well. This resulted in individual sentences that were  
12 sufficient but not greater than necessary under Section 3553(a).

13 More important, as the Tenth Circuit has appropriately noted:

14 Section 3553(a)(6) does not require the sentencing court to compare  
15 the sentences of codefendants; rather it looks to uniformity on a  
16 national scale. Moreover, a sentencing court is not required to  
provide a specific discussion of the Section 3553 factors for a  
sentence falling within a range suggested by the Guidelines. All that  
is required is that the court provide a general statement noting the  
appropriate guideline range and how it was calculated.

17 United States v. Ivory, 532 F. 3d 1095, 1107 (10<sup>th</sup> Cir. 2008) (citation and internal quotation marks  
18 omitted).

19 Defendant’s sentence is uniform when compared on a national scale to those of defendants  
20 sentenced within his same stipulated guideline range. Defendant’s sentence, however, cannot be  
21 compared to those of his codefendants who had different applicable guideline ranges.

22 In addition, the court at sentencing calculated defendant’s sentencing guideline range in  
23 conformity with that stipulated in the plea agreement. The court also considered all the information  
24 provided in the presented investigation report, as well as defense and prosecutor counsels’  
25 arguments. More important, the court carefully weighed all the sentencing factors set forth in  
26 Section 3553(a). This included, among other matters, defendant’s particular role in the offense, as  
27 well as his personal characteristics and family situation. Defense counsel’s arguments were indeed

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2 convincing, given that the court did not sentence defendant at the top of the stipulated range.  
3 However, the prosecutor's arguments were likewise convincing, to the effect that a sentence at the  
4 lower end of the stipulated range was likewise not warranted. The result was a sentence within the  
5 middle range of the stipulated parameters, which the Court determined was sufficient but not greater  
6 than necessary under Section 3553(a).<sup>1</sup>

7 **SO ORDERED.**

8 In San Juan, Puerto Rico this 23<sup>rd</sup> day of February, 2010.

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11 *S/Gustavo A. Gelpi*  
12 GUSTAVO A. GELPI  
13 United States District Judge  
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25 <sup>1</sup> Both at sentencing and in the instant motion defendant pointed out that counsel for  
26 codefendant Rivera Febres was attorney Rachel Brill. To the extent this suggests that Rivera Febres  
27 received a more favorable sentence for being represented by this particular attorney, such contention  
is misplaced and has no basis on the record. As the court mentioned early, each defendant received  
a particularized sentence under Section 3553(a).